No. 03-709

Supreme Court, U.S.
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In The Supreme Court of the United States

CIGNA HEALTHCARE OF CALIFORNIA, INC.,

Petitioner,

vs.

MUZEYYEN BALABAN-ZILKE, Ph.D., individually and as successor-in-interest to BRAD ZILKE,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of California, Second Appellate District

PETITIONER'S REPLY MEMORANDUM

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PETITIONER'S REPLY MEMORANDUM

In her opposition brief, respondent agrees with petitioner that "[r]eview should be granted by this Court" and raises an additional issue for this Court to consider – whether an arbitration agreement contained in a standard form contract of adhesion represents an unconstitutional deprivation of the right to a jury trial. Br. in Opp'n at i, 2-19, 30. Respondent's opposition confirms that this Court should grant CIGNA's petition for writ of certiorari to resolve the numerous conflicts in authority regarding application of the McCarran-Ferguson Act to the Federal Arbitration Act identified in CIGNA's petition. Respondent's new issue, however, does not present any question requiring resolution by this Court.

First, to the extent respondent argues it is unconscionable to allow a contracting party to give up the right to a jury trial, that issue is not properly presented by this record. In this case, the California Court of Appeal did not hold that CIGNA's arbitration contract ran afoul of generally-applicable state laws regarding unconscionability and contracts of adhesion. Pet. App. at 4-5. Instead, the Court of Appeal refused to enforce the contractual arbitration clause solely on the basis of a state law (Cal. Health & Safety Code § 1363.1 (West 2000)) that set special conditions for the enforcement of any arbitration agreements contained in a healthcare plan. Pet. App. at 4-6.

Second, this Court has previously enforced other arbitration contracts found in similar standard form contracts. *See, e.g., Doctor's Assocs. v. Casarotto*, 517 U.S. 681, 682, 686-87 (1996); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 268-69, 280-81 (1995). It appears to be settled law that there is nothing inherently unconscionable

about agreeing to forego a jury trial in favor of alternate dispute resolution.

Third, the California and Ninth Circuit opinions cited by respondent in support of her new issue all reinforce CIGNA's point that, on a variety of grounds, lower courts are refusing to enforce contractual arbitration agreements for reasons that cannot be squared with the Federal Arbitration Act. *See, e.g.*, Br. in Opp'n at 10-14, 19; *Circuit City Stores, Inc. v. Mantor*, 335 F.3d 1101, 1107-09 (9th Cir. 2003); *Armendariz v. Found. Health Psychcare Servs.*, 24 Cal. 4th 83, 120-21, 99 Cal. Rptr. 2d 745, 771-73 (2000); *Broughton v. Cigna Healthplans*, 21 Cal. 4th 1066, 1082-85; 90 Cal. Rptr. 2d 334, 346-48 (1999). Respondent's authority shows that many courts do not place arbitration contracts " 'upon the same footing as other contracts' " and improperly "invalidate arbitration agreements under state laws applicable *only* to arbitration provisions." *Doctor's Assocs.*, 517 U.S. at 687. Respondent's authority thus provides additional support for CIGNA's petition because it demonstrates the urgent need for this Court to clarify the extent to which federal law requires enforcement of arbitration agreements, and whether it is permissible for courts to deny enforcement of such contracts on the basis of their manifest hostility toward arbitration agreements.

Respectfully submitted,

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